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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



B5

DATE: OCT 31 2011

OFFICE: TEXAS SERVICE CENTER

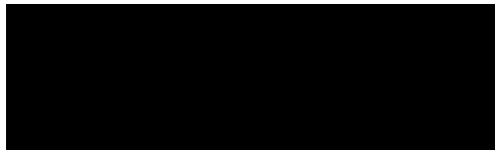
FILE: [REDACTED]

IN RE: Petitioner:  
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner is a counseling center that seeks to employ the beneficiary as a mental health counselor. At the time the petitioner filed the petition, the beneficiary was also a student at [REDACTED]

[REDACTED] The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the beneficiary qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and a new witness letter.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

(A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien’s past record justifies projections of future benefit to the national interest. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term “prospective” is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on January 22, 2010. In an introductory letter that accompanied the initial filing, counsel stated:

[The beneficiary’s] eligibility for [the] national interest waiver . . . is premised upon her documented statu[r]e as a Trauma Specialist with Certified Trauma Specialist status (CTS), whose contributions, training, and supervision has already successfully benefited

numerous families in a vastly underserved population in [REDACTED] The achievement of CTS status demonstrates that [the beneficiary] is among the elite in her field. That she has used her specialized knowledge to successfully implement the highly regarded Family Based Program at the [REDACTED] is a testament to her extraordinary abilities with which she serves the U.S. national interests to a significantly greater degree than others in her field. . . .

[The beneficiary's] mastery of the field of mental health, with a specialty in trauma and attachment disorders for children and families, has an application which is national and even international in scope, as family based trauma occurs throughout the U.S. . . . [The beneficiary] is able to perform therapy as a result of trauma, as well as effectively train and supervise other therapists in the field throughout the United States. . . .

Furthermore, [the beneficiary's] work offers a cost effective alternative therapy by successfully implementing therapeutic techniques that avoid placement of children in restrictive environments in mental health facilities, such as hospitals, residential treatment facilities or therapeutic foster placement. As [the beneficiary's] field develops nationally, her successful work will contribute to reducing health care costs. . . .

[The beneficiary's] accomplishments as a mental health caregiver with a specialty in trauma and attachment disorders for children and youth are extraordinary. [The beneficiary] is a Master Therapist working in a specialist mental health field, and she is a certified trauma [specialist] (CTS). . . . Only those at the top of [the beneficiary's] field obtain CTS status. Her services are extremely important to the local populations she currently serves in [REDACTED] as well as on a national scale. . . .

[T]he supporting evidence amply confirms [the beneficiary's] status as a critical and seminal figure in the mental health field as a certified trauma therapist. Her eligibility is not premised on the labor market unavailability of "minimally qualified" U.S. workers in her field but on her indisputable stature as a national figure substantially contributing to her field.

The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The AAO will not take counsel's claims, such as the assertion that "[o]nly those at the top of [the beneficiary's] field obtain CTS status," at face value without credible and persuasive supporting documentation. With this in mind, the AAO will now consider the evidence submitted with the petition.

The petitioner submitted copies of various diplomas and continuing education certificates, documenting the beneficiary's training and professional credentials. These materials establish that the beneficiary is qualified to work in her field, but by themselves they contain no internal evidence to distinguish her from other qualified professionals in the same specialty.

Apart from the above credential documents, the petitioner's initial submission consists almost entirely of witness letters. Chronologically, the first witness to work with the beneficiary was [REDACTED] now team manager of children's services for the [REDACTED] signed a letter containing the following passages:

I have known [the beneficiary] since 1983 when she was employed as a Residential Social Worker at the then named [REDACTED] [REDACTED] During her period there I was her senior Manager. My observations of her then showed [the beneficiary] to be a highly competent and insightful professional who displayed outstanding performance with great future potential in what ever aspect of social work she chose to concentrate, and over the past 20 years I have had the pleasure of witnessing her reach that great potential as a trauma specialist. Her excellent and diverse range of abilities clearly placed her in a position superior to that of her peers and to those with higher qualification. . . .

I am aware that [the beneficiary's] history includes working alongside [REDACTED] at the internationally acclaimed orphanages of [REDACTED] where she gained a wealth of knowledge of the impact of neglect and non-attachment on the child populations. . . . [The beneficiary] has a substantive history with a total of 20 years plus experience working in the mental health field with children, families and related services.

[REDACTED] now director of behavioral health rehabilitation services and strengths-based services at the [REDACTED], signed a letter containing the following passages:

I have known [the beneficiary] since September 2003 when I was her clinical lecturer during her completed Family Based Certificate Program with the [REDACTED] [REDACTED] . . .

[The beneficiary] currently supervises and clinically directs a highly successful program in the rural counties of [REDACTED] . . . Clearly the program's success . . . is ultimately due to [the beneficiary's] expertise in her field which is exemplified by her CTS designation and her obvious knowledge and insights of the challenging world of chronic mental health over and above other mental health therapists in her field.

. . . I am impressed that [the beneficiary's] resume includes working with [REDACTED] [REDACTED] where she gained a wealth of knowledge of the considerable impact of neglect and non-attachment on the child populations. . . . [The beneficiary] has a substantive history with a total of over 20 years

experience working in the mental health field with children, families and related services.

. . . I strongly attest that [the petitioner] has become a highly valued mental health resource in the counties which it serves since the launch of The Family Based Program in 2004 directly as a result of the expert clinical supervision and direction of [the beneficiary]. It is my considered professional opinion that The Family Based Program at [the petitioning entity] stands above and beyond compared to other programs in the counties of [REDACTED] under the sole guidance and specialized expertise and knowledge of [the beneficiary].

The overall structure of the two above-quoted letters is very similar, and portions of the letters (such as the passages regarding [REDACTED] are virtually identical.

The similarities do not end with the above two letters. A letter signed by [REDACTED] [REDACTED] contains the following passage:

I am aware that [the beneficiary] developed the Family Based Program for [the petitioner] in 2004. Through my work in a related field, I can strongly attest that [the petitioner] is a highly valued mental health resource in the counties which it serves since the launch it's *[sic]* family based program in 2004. [The beneficiary] is directly responsible for the reputation of [the petitioner] as a result of her expert clinical supervision and direction of the program. It is my considered professional opinion that The Family Based Program at [the petitioning entity] stands above and beyond compared to other programs in the counties of [REDACTED] under the sole guidance and specialized expertise and knowledge of [the beneficiary].

The above passage from [REDACTED] letter is almost identical to the fourth quoted paragraph from [REDACTED] letter. It is not clear who actually wrote the shared passages. The AAO considers their similarities to be beyond coincidence.

Most of the remaining witnesses are current or former employees of the petitioning entity, or have worked with the beneficiary in other capacities. [REDACTED] president and chief executive officer of the petitioning entity as well as a professional nurse and licensed psychologist, stated:

[The beneficiary] has distinguished herself as one of the top therapists that I have had the pleasure of working with. I do not foresee a successful future for the Family Based Program at the [petitioning entity] without [the beneficiary's] continued supervision.

. . . [C]hildren who have developed in the context of ongoing danger, maltreatment, and inadequate care giving systems are ill-served by the current diagnostic system, as

it frequently behavioral control [*sic*] without recognition of interpersonal trauma and lack of safety in the etiology of symptoms, and a lack of attention to ameliorating the developmental disruptions that underlie the symptoms. [The beneficiary's] work already directly addresses these issues, which is why the [petitioner's] Family Based Program is at the forefront of this challenging area of mental health care. . . .

[The beneficiary] developed the first specialty family based program to be licensed by the state of [REDACTED] in 2004. . . . The goal of the program is to stabilize children in their home to avoid placement in a more restrictive environment in a mental health facility. . . . This program serves a vastly under serviced population in [REDACTED]. Under her leadership this program has become the most respected program in this part of [REDACTED]. The success of this program is evidenced by a track record of a 1% out of home placement for children who have been involved in this treatment model while remaining very cost effective. . . .

We have been approached by an additional county in [REDACTED] to expand our existing service to that area in spite of the fact that the county had been closed to the addition of new providers. This is due to the reputation of [the beneficiary] as Lead Clinical Therapist and the exceptional and unique skills she has brought to this service.

[REDACTED] clinical director at the petitioning entity, stated:

I have heard of [the beneficiary's] reputation long before I had come to work at [the petitioning entity] in 2008. Her reputation as a highly skilled therapist preceded her across multiple counties and mental health service lines. . . . In my 16 years of experience working in the mental health field I can confidently state that I have not encountered an equally comparable mental health professional to that of [the beneficiary] with likewise [*sic*] qualification or experience. She truly is a leader in her field of mental health therapists and supervisors. . . .

There continues to be a national shortage of suitably qualified therapists in [the beneficiary's] field. . . . [The beneficiary's] CTS certification and Family Based qualifications enable[] her to play a direct key role as educator and trainer of mental health therapists everywhere in the U.S. In addition, [the beneficiary's] CTS certification status enables her to be called on into crisis/disaster areas . . . throughout the U.S to provide trauma counseling services on an emergency need basis. Not all states in the U.S currently have trauma specialist certification programs available, so her ability to go and provide mental health counseling services in crisis/disaster areas around the U.S is a very important and unique characteristic that is national in scope.

[REDACTED] the petitioner's director of quality assurance, stated:

[The beneficiary] has achieved . . . several accomplishments while working at this agency. First, she has completed the state mandated training on the Structural Family Therapy model, which is the foundation of Family Based Mental Health Services. Next, she attained the highly acclaimed status of Certified Trauma Specialist. . . . She has been a pioneer in helping therapists at our agency understand and implement the Structural Family Therapy techniques to the families that they serve. . . .

[The beneficiary] is exceptional in her abilities to stabilize families with long histories of failed services of mental health. It is fair and accurate to say 'they have been through the system and remain stuck' until embarking on the unique skills of [the beneficiary].

██████████, director of the Family Based Mental Health Service at ██████████  
██████████ signed a letter that read, in part:

I have known [the beneficiary] since May 2005 when I was then employed at [the petitioning entity]. . . .

The most remarkable quality of [the beneficiary] is her ability to stabilize chronically mentally ill individuals in their home and ultimately avoid hospitalization or other restrictive placements. . . . It is widely accepted that children are more likely to flourish and succeed in their homes as opposed to residential placements. It is also an undisputed phenomenon that it is more cost effective for the U.S to have children succeed in their homes with their families. [The beneficiary] shows expert command of this principle and her skills are exemplarily [*sic*] in achieving this.

██████████ fell into a familiar template when she stated that the beneficiary's work "with ██████████ in the infamous ██████████ [gave her] an abundant knowledge of the severe effects of neglect and non-attachment on a child's mental health."

██████████, program specialist with the ██████████  
██████████ stated:

I met [the beneficiary] personally in September, 2007 when I was employed as Mental Health Program Specialist with ██████████ . . .

[The beneficiary] shows remarkable expertise and understanding of her profession, and she is able to effect change in the lives of the people she serves. . . .

[The beneficiary's] CTS certification together with her Family Based certification enables her to play a direct and key role as educator and trainer of mental health



therapists. This addresses the shortages of qualified mental health therapists throughout the U.S., and immediately in rural and impoverished [REDACTED]

While [REDACTED] was one of many witnesses who asserted that the beneficiary's work is national in scope, she indicated that the beneficiary "maintain[s] a caseload of approximately 5 families" in addition to supervising four two-person teams (eight therapists in all).

[REDACTED], a licensed clinical social worker in [REDACTED] stated:

I have known [REDACTED] for close to ten years and, through her, know of the very important work done by [the beneficiary], who developed the Family Based Program in 2004 for the [petitioner]. . . . Through her work, [the beneficiary] has an excellent success rate of working with families to stabilize children and assist them in remaining in their homes.

A letter signed by [REDACTED] child and adolescent psychiatrist and medical director for [REDACTED], read, in part:

It is very difficult to find and retain clinicians with knowledge and expertise of helping and treating these under privileged families. I strongly believe that a clinician with credentials that [the beneficiary] has is a valuable resource and doubtlessly is in the best interest of our country and this area in particular.

. . . [The beneficiary] is directly responsible for the reputation of the [REDACTED] as a result of her expert clinical supervision and direction of the program.

[REDACTED] letter, using the same language found in other letters, indicated that the petitioner's family based program "stands above and beyond compared to other programs in the counties of [REDACTED] under the sole guidance and specialized expertise and knowledge of [the beneficiary]."

[REDACTED] stated:  
"Someone with [the beneficiary's] credentials would be a godsend to the people of [REDACTED]. We do not have a similarly qualified person working here. . . . The need for the types of services she provides is overwhelming and chronic." [REDACTED] was one of several witnesses to contradict counsel's claim that a worker shortage is not a basis for the waiver application.

The witnesses who signed the letters quoted above are heavily concentrated in [REDACTED]. Most of the witnesses outside that area have demonstrable ties to the beneficiary, with the exception of [REDACTED] (who claims no training, experience or expertise in psychology, social work, or related disciplines).

The opinions of experts in the field are not without weight and the AAO has considered them above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). USCIS is, however, ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as the AAO has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The letters considered above primarily contain bare assertions of widespread recognition and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions have influenced the field outside of [REDACTED]. The appearance of identical or nearly identical passages in several supposedly independent letters raises the important question of who actually wrote those letters.

Furthermore, the record lacks evidence to corroborate key factual claims, such as the assertion that CTS certification is a rare and prestigious credential that places the beneficiary among the elite of her profession. The petitioner submitted a copy of the application instructions for CTS certification. The listed requirements include "2000 hours experience in counseling specific to trauma," "High School Diploma or GED," and "240 clock hours of trauma specific education and training." The record contains no evidentiary support for counsel's claim that "[o]nly those at the top of [the beneficiary's] field obtain CTS status," and the documentation from the entity responsible for CTS certification appears to contradict that claim.

On April 1, 2010, the director issued a notice of intent to deny the petition. The director stated that the petitioner must show that the beneficiary has "a past record of specific prior achievement with some degree of influence on [her] field as a whole." The director found that the petitioner had not established that the beneficiary's intended work would be national in scope.

In response, counsel asserted that the beneficiary's work has national scope because some of her patients and former trainees "have moved from [REDACTED] to various other regions of the U.S., thereby enabling them to benefit their new regions," and because "she serves families with adopted children, both internationally and across state lines." Counsel repeats this argument on appeal, and the AAO will address it in that context.

Furthermore, the record does not show that the beneficiary has personally developed new strategies or methodologies for patient treatment. It therefore appears that her training of subordinates simply amounts to passing along the same skills and techniques that she received from those who trained her. The beneficiary's use and passing along of these methods appears, in some ways, to mirror the situation of the alien beneficiary in *Matter of New York State Dept. of Transportation*:

An alien's job-related training in a new method, whatever its importance, cannot be considered to be an achievement or contribution comparable to the innovation of that new method. While innovation of a new method is of greater importance than mere training in that method, it must be stressed that such innovation is not always sufficient to meet the national interest threshold. For example, an alien cannot secure a national interest waiver simply by demonstrating that he or she holds a patent. Whether the specific innovation serves the national interest must be decided on a case by case basis.

*Id.* at 221 n.7.

The petitioner's response to the notice, like the petitioner's initial submission, consisted almost entirely of witness letters. As before, most of the witnesses are from [REDACTED]. Three letters are from the families of some of the beneficiary's patients. All three families live in [REDACTED] the same town as the petitioner's location. These witnesses praised the beneficiary's abilities as a therapist. The beneficiary's skill and competence are not in question in this proceeding. The issue, instead, is whether the beneficiary stands out from her peers in such a way that her work benefits not only her patients and her employer, but has a wider influence on her field. Anecdotal patient statements cannot establish that level of influence.

Two witnesses had previously provided letters with the initial submission. [REDACTED] repeated counsel's assertions that patients and trainees will move to other parts of the country, and also asserted that the petitioner's CTS certification "along with her experience working as a disaster responder in the UK . . . allows her to be a valuable asset across the US if she were called on in a major disaster or crisis by the [REDACTED]." These hypothetical assertions do not establish that the beneficiary's occupation is inherently national in scope.

[REDACTED] asserted that the beneficiary "was called upon by county officials to assist as a front line worker to assist and aid" after "the [REDACTED] disaster struck a major area of the [REDACTED]"; [REDACTED] asserted that "her experience during this time would more than adequately equip her with the skills necessary to respond effectively to any other disaster or crisis across the United States." The record does not show that the beneficiary's work in [REDACTED] had a national impact or any significant influence beyond the individual patients she counseled after the disaster. The limited scope of one-on-one patient care does not take on greater significance as a result of the circumstances that led the patient to require care.

[REDACTED], director of the [REDACTED], offered the general assertion that the beneficiary's patients and trainees have moved to other states, and that the beneficiary has succeeded in a clinical setting where others have failed.

[REDACTED] executive director of [REDACTED] where the beneficiary worked from 2004 to 2005, signed a letter that fits the template of several of the earlier letters, such as the following passage:

I am aware that [the beneficiary's] history includes working alongside [REDACTED] at the internationally acclaimed [REDACTED] where she gained a wealth of knowledge of the impact of neglect and non-attachment on the child populations. . . . [The beneficiary] has a substantive history with a total of 20 years plus experience working in the mental health field with children, families and related services.

[REDACTED] asserted that the beneficiary "continues to remain an influential source in her field," but the record is devoid of objective documentation of that claimed influence.

[REDACTED], a clinical consultant at [REDACTED], repeats previously advanced arguments regarding the importance of the beneficiary's work, the superiority of her skill, and "a national shortage of suitably qualified and experienced therapists in [the beneficiary's] field."

[REDACTED], former [REDACTED] Association, stated that he became aware of the beneficiary's work through his acquaintance with one of the petitioner's employees whom the beneficiary had trained. [REDACTED] claimed that the beneficiary's CTS certification "is a coveted official document only afforded to a small number in the state of [REDACTED]" The record contains nothing from the [REDACTED] to confirm this claim, and a multiplicity of vague third-party witness statements, whatever their number, cannot take the place of direct, first-hand evidence in this regard.

[REDACTED] asserted that the beneficiary "has and continues to produce and implement supporting documentation policies . . . to pioneer change at a national level regarding training standards for both mental health professionals and supervisors and directors within the family based program." The record does not document the nature or extent of this ill-defined "change at a national level."

[REDACTED] a school psychologist at the [REDACTED] stated that he does not know the beneficiary personally but is familiar with her work because of an unnamed relative at the petitioning entity. (The AAO notes his shared surname with [REDACTED]) [REDACTED] asserted that the beneficiary "pioneered and directed [the petitioner's family based program] by creating treatment procedures and completing mandatory documentation for the program required by the state." His letter contained no other details about the "treatment procedures."

The director denied the petition on June 14, 2010. The director found that the petitioner's evidence "did not demonstrate that the [beneficiary] had influenced her field overall to a greater extent than other mental health counselors." The director noted that the petitioner had relied heavily on letters from witnesses who speculated about the possible future impact of the beneficiary's work.

On appeal, counsel states that the director erroneously found that all of the petitioner's witnesses "are from the [REDACTED] area," whereas "Petitioner provided references from [REDACTED]."

██████████” This claim derives from a selective reading of the director’s decision. In context, the quoted passage reads:

This decision has considered all of the evidence of record, including the letters from a retired Southwest Region Field Director of the ██████████ Education Association, a school psychologist in the ██████████ ██████████  
██████████ Psychiatric Hospital. All of the references are from the ██████████ A letter was submitted from ██████████

In context, it is clear that the sentence “All of the references are from the ██████████ area” refers not to all of the petitioner’s witnesses, but to all of the witnesses specifically listed in the preceding sentence. The director’s specific mention of ██████████ proves that the director did not disregard that letter, as counsel claims.

With respect to the witnesses from ██████████ claimed no personal familiarity with the beneficiary’s work, and no expertise in the beneficiary’s field. He basically stated that his jurisdiction lacked qualified professionals in the beneficiary’s specialty. The ██████████ for close to ten years” and therefore has a demonstrable link with the petitioning entity in ██████████

Counsel contends that “USCIS abused its discretion by requiring that [the beneficiary] influenced her field overall to a greater extent than other mental health counselors.” There exists no statute, regulation or case law granting a blanket waiver to mental health counselors. Counsel fails to explain why the beneficiary should receive the national interest waiver – a special, added immigration benefit – in the absence of significant impact and influence that would distinguish her from “other mental health counselors.”

Counsel states: “USCIS erred in alleging that Petitioner does not detail accomplishments, precise outcomes or end products of the projects in which [the beneficiary] participated.” Counsel does not elaborate on this argument. Therefore, this assertion remains simply a vague and unsubstantiated assertion.

In a supplemental brief, counsel states:

[The beneficiary’s] exceptional abilities have been developed through her unique experience, including her work with ██████████ [sic] in ██████████ and her determined pursuit of a rigorous continuing education schedule and cutting-edge training. Moreover, her distinguished record of accomplishments and documented track record of professional recognition and achievement conclusively documents that she is already serving U.S. national interests to a significantly greater extent than other contributors to the Trauma Specialists sub-field of mental health care.

[The beneficiary's] eligibility for [the] national interest waiver . . . is further buttressed by her Certified Trauma Specialist status (CTS).

The above passage also appeared in counsel's introductory letter, and therefore it is not a response to any legal or procedural error by the director. Counsel, here, does not demonstrate that the beneficiary stands out in her field. Rather, counsel simply describes some of the beneficiary's activities and credentials, and declares that they distinguish her from others in the field. The beneficiary's claimed (but not documented) work with [REDACTED] may reflect favorably on her dedication, but it does not inherently make her a superior mental health counselor. The record amply demonstrates the beneficiary's continuing education, but continuing education is a routine requirement in many professions. The petitioner has not shown that the beneficiary's efforts in this area are anything beyond what is required to maintain her credentials. The reference to the beneficiary's CTS status continues a persistent pattern in the record, holding out CTS certification as a coveted badge of superiority without persuasive evidence to support that contention.

Counsel states that the beneficiary's patients and trainees may move to other parts of the country, thereby broadening the geographical scope of her impact. As an example, the petitioner submits a new witness letter. [REDACTED] states that the beneficiary provided training "of a much higher clinical standard compared to other supervision received," and that he then accepted a position "as a Life Skills teacher" at a high school in [REDACTED].

Any claimed national scope from patient or trainee migration would be highly diluted and diffused. Furthermore, the "national scope" test would be meaningless if the migration of colleagues or clients could satisfy it. Virtually any alien could meet such a standard, making it worthless as a distinguishing criterion. Under such a standard, an alien who sells magazines and snacks at an airport could be said to have national scope, owing to the almost immediate dispersal of the alien's merchandise to distant points.

Counsel also contends: "Although [the beneficiary's] work is primarily confined to [REDACTED] her patients come to her from other regions and therefore it serves those communities interests to have them treated by an expert in the field of mental health counseling." The petitioner has not documented any significant inflow of out-of-state patients that would realistically demonstrate national scope in a nation of over 300 million people.

Counsel speculates that the beneficiary "herself is not confined to practice medicine in [REDACTED] [REDACTED]. At any time when she chooses, [the beneficiary] could move to another part of the United States and continue her practice there, assisting other children." Counsel's use of the phrase "medical practice" is misleading. The beneficiary holds a master's degree in social work and has no credentials to "practice medicine" in [REDACTED]. More substantively, if the beneficiary were to relocate, this action would simply move her local influence from one area to another; her influence and impact in [REDACTED] would cease if she left.

A section of counsel's brief begins with the underlined heading "Petitioner Persuasively Demonstrates That The National Interest Would Be Adversely Affected If A Labor Certification Were Required For The Alien." Counsel wrote these words more than a year after the petitioner did, in fact, apply for a labor certification on the beneficiary's behalf. On April 10, 2009, nine months before the petitioner filed the present petition, seeking a waiver, the petitioner filed ETA Form 9089 with the Department of Labor. The Department of Labor approved the labor certification on February 10, 2010, three weeks after the present petition's filing date.

Using the approved labor certification, the petitioner filed a new Form I-140 petition on May 11, 2010. That petition is currently pending, and processing will resume upon completion of the present appeal. (The Texas Service Center has no access to the record, and must suspend adjudication, while an appeal or motion is pending at the AAO.) The approved labor certification shows that the petitioner has already met the job offer requirement that it sought to waive. Furthermore, the approval of that labor certification fatally undermines any claim that the labor certification process is an impediment to the beneficiary's ability to immigrate to the United States.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.